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13
14 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
15 **OAKLAND DIVISION**

16 DONALD J. TRUMP, the Forty-Fifth President
of the United States, KELLY VICTORY,
17 AUSTEN FLETCHER, AMERICAN
CONSERVATIVE UNION, ANDRES
18 BIAGGIANI, MARYSE VERONICA JEAN-
LOIUS, NAOMI WOLF, AND FRANK
19 VALENTINE, INDIVIDUALLY AND ON
20 BEHALF OF THOSE SIMILARLY
SITUATED,

21 Plaintiffs,

22 v.

23 YOUTUBE, LLC, and SUNDAR PICHAI,
24 Defendants

ANDREI POPOVICI (234820)
MARIE FIALA (79676)
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Case No: 4:21-CV-08009-JSW

**DECLARATION OF ANDREI POPOVICI
AND REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO MOTION TO DISMISS**

Judge: Hon. Jeffrey S. White

DECLARATION OF ANDREI D. POPOVICI

I, Andrei D. Popovici, declare as follows:

1. I am an attorney admitted to practice before this Court and licensed to practice law in California. I am counsel for the Plaintiffs in this action. I make this Declaration in support of Plaintiff's Opposition to Motion to Dismiss and Motion for Preliminary Injunction.

2. Exhibit A is a true and correct copy of excerpts from Unedited Transcript of the March 25, 2021 House Committee on Energy and Commerce Hearing Disinformation Nation: Social Media's Role in Promoting Extremism and Misinformation": Hearing before H. Comm. on Energy and Com., 117th Cong. (2021), downloaded from <http://docs.house.gov/meetings/IF/IF16/20210325/111407/HHRG-117-IF16-Transcript-20210325.pdf>.

3. Exhibit B is a true and correct copy of the Opening Statement as Prepared for Delivery of Committee Chairman Frank Pallone, Jr. at the March 25, 2021 House Committee on Energy and Commerce Hearing Disinformation Nation: Social Media's Role in Promoting Extremism and Misinformation": Hearing before H. Comm. on Energy and Com., 117th Cong. (2021), downloaded from https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Opening%20Statement_Pallone_CAT-CPC_2021.3.25_0.pdf.

4. Exhibit C is a true and correct copy of the Opening Statement as Prepared for Delivery of Communications and Technology Subcommittee Chairman Mike Doyle at the March 25, 2021 House Committee on Energy and Commerce Hearing Disinformation Nation: Social Media's Role in Promoting Extremism and Misinformation": Hearing before H. Comm. on Energy and Com., 117th Cong. (2021), downloaded from https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Opening%20Statement_Doyle_CAT-CPC_2021.3.25.pdf.

5. Exhibit D is a true and correct copy of the Opening Statement as Prepared for Delivery of Consumer Protection and Commerce Subcommittee Chair Janice D. Schakowsky at the March 25, 2021 House Committee on Energy and Commerce Hearing Disinformation Nation:

1 Social Media's Role in Promoting Extremism and Misinformation": Hearing before H. Comm. on
2 Energy and Com., 117th Cong. (2021), downloaded from
3 [https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/](https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Opening%20Statement_Schakowsky_CAT-CPC_2021.3.25_0.pdf)
4 [Opening%20Statement_Schakowsky_CAT-CPC_2021.3.25_0.pdf](https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Opening%20Statement_Schakowsky_CAT-CPC_2021.3.25_0.pdf).

5 6. Exhibit E is a true and correct copy a Memorandum from Committee on Energy
6 and Commerce Staff, dated March 22, 2021, prepared for the March 25, 2021 House Committee
7 on Energy and Commerce Hearing Disinformation Nation: Social Media's Role in Promoting
8 Extremism and Misinformation": Hearing before H. Comm. on Energy and Com., 117th Cong.
9 (Memo From Comm. Staff), downloaded from
10 [https://docs.house.gov/meetings/IF/IF16/20210325/111407/HHRG-117-IF16-20210325-](https://docs.house.gov/meetings/IF/IF16/20210325/111407/HHRG-117-IF16-20210325-SD002.pdf)
11 [SD002.pdf](https://docs.house.gov/meetings/IF/IF16/20210325/111407/HHRG-117-IF16-20210325-SD002.pdf).

12 7. Exhibit F is a true and correct copy of Witness Testimony of Mr. Sundai Pichai,
13 Chief Executive Officer, Google, prepared for the March 25, 2021 House Committee on Energy
14 and Commerce Hearing Disinformation Nation: Social Media's Role in Promoting Extremism
15 and Misinformation": Hearing before H. Comm. on Energy and Com., 117th Cong., downloaded
16 from [http://docs.house.gov/meetings/IF/IF16/20210325/111407/HHRG-117-IF16-Wstate-](http://docs.house.gov/meetings/IF/IF16/20210325/111407/HHRG-117-IF16-Wstate-PichaiS-20210325-SD001.pdf)
17 [PichaiS-20210325-SD001.pdf](http://docs.house.gov/meetings/IF/IF16/20210325/111407/HHRG-117-IF16-Wstate-PichaiS-20210325-SD001.pdf).

18 8. Exhibit G is a true and correct copy of Alphabet Inc. Form 10-K dated 2/3/2021,
19 filed for the year ended 12/31/2020, downloaded from
20 <https://www.sec.gov/Archives/edgar/data/1652044/000165204421000010/goog-20201231.htm>.

21 9. Exhibit H is a true and correct transcription of part of the October 28, 2020 U.S.
22 Senate Committee on Science, Technology and Transportation Hearing Does Section 230's
23 Sweeping Immunity Enable Big Tech Bad Behavior: Hearing before S. Comm. on Commerce,
24 Science and Transportation, 117th Cong., video/audio reviewed at
25 [https://www.commerce.senate.gov/2020/10/does-section-230-s-sweeping-immunity-enable-big-](https://www.commerce.senate.gov/2020/10/does-section-230-s-sweeping-immunity-enable-big-tech-bad-behavior)
26 [tech-bad-behavior](https://www.commerce.senate.gov/2020/10/does-section-230-s-sweeping-immunity-enable-big-tech-bad-behavior).

1 I declare under penalty of perjury that the foregoing is true and correct. This declaration
2 was executed on January 17, 2022, in Dripping Springs, Texas.

3 By: /s/ Andrei D. Popovici
4 Andrei D. Popovici

5 REQUEST FOR JUDICIAL NOTICE

6 Pursuant to Federal Rule of Evidence 201, Plaintiffs ask the Court to take judicial notice
7 of the documents described in the above Declaration of Andrei Popovici in support of Plaintiffs'
8 Opposition to Motion to Dismiss:

9 Under Fed. R. Evid. 201, a court "may judicially notice a fact that is not subject to
10 reasonable dispute because it...can be accurately and readily determined from sources whose
11 accuracy cannot reasonably be questioned." *See Santa Monica Food Not Bombs v. City of Santa*
12 *Monica*, 450 F.3d 1022, 1026 n.2 (9th Cir. 2006). Facts contained in public records are
13 considered appropriate subjects of judicial notice, including the records and reports of
14 administrative bodies. *Id. See also* United States v. *Ritchie*, 342 F.3d 903, 909 (9th Cir. 2003).
15 In particular, judicial notice is appropriate under Fed. R. Evid. 201(b)(2) for information obtained
16 from official governmental websites. *Paralyzed Veterans of Am. V. McPherson*, 2008 WL
17 4183981, at *5 (N.D. Cal. Sept. 8, 2008) (court took judicial notice of information from official
18 government websites, citing multiple decisions from federal circuits and district courts).

19 A court may consider judicially noticeable materials without converting a motion to
20 dismiss into a motion for summary judgment. *United States v. Ritchie*, 342 F.3d 903, 908 (9th
21 Cir. 2003); *Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988). Furthermore,
22 under the "incorporation by reference" doctrine, a court may "take into account documents
23 'whose contents are alleged in a complaint and whose authenticity no party questions, but which
24 are not physically attached to the [plaintiffs] pleading.'" *Knievel v. ESPN*, 393 F.3d 1068, 1076
25 (9th Cir. 2005).

26 The March 25, 2021 Congressional Hearing (Exhs. A-F) is referenced in Plaintiffs' First
27 Amended Complaint at FAC ¶¶ 67, 71 (Disinformation Nation: Social Media's Role in Promoting
28 Extremism and Misinformation: Hearing before H. Comm. on Energy and Com., 117th Cong.

(2021)). The October 28, 2020 Senate Hearing (Exh. H) is referenced in Plaintiffs' First Amended Complaint at FAC ¶ 67 (Does Section 230's Sweeping Immunity Enable Big Tech Bad Behavior: Hearing before S. Comm. on Commerce, Science and Transportation, 117th Cong. (2020)). The Court may take judicial notice of these governmental records on a motion to dismiss. *Judan v. Wells Fargo Bank, National Association*, 2017 WL 3115172, at *1 (N.D. Cal. July 21, 2017), citing *Mack v. S. Bay Beer Distrib., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986), *abrogated on other grounds by Astoria Fed. Sav. Loan Ass'n v. Solimino*, 501 U.S. 104 (1991).

Regarding Exhibit G, the Court may take judicial notice of the content of the Securities and Exchange Commission Form 10-K, and the fact that it was filed with the agency. *Gerritsen v. Warner Bros Entertainment Inc.*, 112 F. Supp.3d 1011, 1031-1032 (C.D. Cal. Jan. 30, 2015). ("Defendants [...] contend that "Ms. Gerritsen cannot amend her complaint by attaching [corporate disclosure documents] to her brief in opposition to defendants' Motion to Dismiss." Courts can consider securities offerings and corporate disclosure documents that are publicly available. *See Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1064 n. 7 (9th Cir.2008). *See also Lovelace v. Software Spectrum Inc.*, 78 F.3d 1015, 1018 (5th Cir.1996) ("When deciding a motion to dismiss ..., a court may consider the contents of relevant public disclosure documents which (1) are required to be filed with the SEC, and (2) are actually filed with the SEC. Such documents should be considered only for the purpose of determining what statements the document contain, not to prove the truth of the documents' contents," citing *Hennessy v. Penril Datacomm Networks, Inc.*, 69 F.3d 1344, 1354-55 (7th Cir.1995)).

Plaintiffs respectfully ask that the Court take judicial notice of the existence and contents of the documents submitted as Exhibits A-H.

Dated: January 17, 2022

Respectfully submitted,

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MARIE FIALA (79676)
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By: /s/ Andrei D. Popovici
Andrei D. Popovici

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